

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court _____ on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. CV 12-04396 MEJ	DATE FILED 8/21/12	U.S. DISTRICT COURT 450 Golden Gate Avenue, 16 th Floor San Francisco, CA 94102
PLAINTIFF LEVI STRAUSS		DEFENDANT MOTHER LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 SEE COMPLAINT	1,157,769	
2 404,248	2,791,156	
3 1,139,254		
4 2,794,649		
5 6,88,399		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1 356,701			
2 516,561			
3 577,490			
4 774,625			
5 775,412			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK Alfred Amistoso	DATE August 23, 2012
-----------------------------	--------------------------------------	-------------------------

1 KILPATRICK TOWNSEND & STOCKTON LLP
2 GREGORY S. GILCHRIST (Bar # 111536)
3 GIA L. CINCONI (Bar # 141668)
4 Two Embarcadero Center, 8th Floor
5 San Francisco, California 94111
6 Telephone: (415) 576-0200
7 Facsimile: (415) 576-0300
8 Email: ggilchrist@kilpatricktownsend.com, gcinconi@kilpatricktownsend.com

9 Attorneys for Plaintiff
10 LEVI STRAUSS & CO.

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 LEVI STRAUSS & CO.,

14 Plaintiff,

15 v.

16 MOTHER LLC,

17 Defendant.

CV 12 4396
Case No. MEJ
COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION, DILUTION, AND
BREACH OF SETTLEMENT
AGREEMENT (INJUNCTIVE
RELIEF SOUGHT)

JURY TRIAL DEMAND

18 Plaintiff Levi Strauss & Co. ("Levi Strauss") complains against defendant Mother LLC
19 ("Mother") as follows:

20 **JURISDICTION, VENUE AND INTRA-DISTRICT ASSIGNMENT**

21 1. Plaintiff's first, second and third claims arise under the Trademark Act of 1946 (the
22 Lanham Act), as amended by the Trademark Dilution Revision Act of 2006 (15 U.S.C. §§ 1051, et
23 seq.). This Court has jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a) and 1338(b)
24 (trademark and unfair competition), 28 U.S.C. § 1331 (federal question) and 15 U.S.C. § 1121
25 (Lanham Act). This Court has supplemental jurisdiction over the remaining state law claims under 28
26 U.S.C. § 1367.

27 2. Levi Strauss is informed and believes that venue is proper in this Court under 28
28 U.S.C. § 1391(b) because Defendant transacts affairs in this district and because a substantial part of

1 the events giving rise to the claims asserted arose in this district.

2 3. Intra-district assignment to any division of the Northern District is proper under Local
3 Rule 3-2(c) and the Assignment Plan of this Court as an "Intellectual Property Action."

4 **PARTIES**

5 4. Levi Strauss & Co. is a Delaware corporation with its principal place of business at
6 Levi's Plaza, 1155 Battery Street, San Francisco, California 94111. Operating since approximately
7 the 1850's, Levi Strauss is one of the oldest and best known apparel companies in the world. It
8 manufactures, markets and sells a variety of apparel, including its traditional LEVI'S® brand jeans.

9 5. Levi Strauss is informed and believes that defendant Mother LLC is a Delaware limited
10 liability company with its principal place of business at 127 East 9th Street, No. 705, Los Angeles,
11 California 90015. Levi Strauss is informed and believes that Defendant manufactures, distributes
12 and/or sells, or has manufactured, distributed and/or sold, a line of clothing, including jeans, under the
13 brand name MOTHER which is offered for sale and sold in this judicial district. Levi Strauss is
14 further informed and believes that Mother has authorized, directed, and/or actively participated in the
15 wrongful conduct alleged herein.

16 **FACTS AND ALLEGATIONS COMMON TO ALL CLAIMS**

17 **Levi Strauss's Arcuate and Tab Trademarks**

18 6. Levi Strauss marks its LEVI'S® brand products with a set of trademarks that are
19 famous around the world. For many years prior to the events giving rise to this Complaint and
20 continuing to the present, Levi Strauss annually has spent great amounts of time, money, and effort
21 advertising and promoting the products on which its trademarks are used and has sold many millions
22 of these products all over the world, including throughout the United States and in California.
23 Through this investment and large sales, Levi Strauss has created considerable goodwill and a
24 reputation for quality products. Levi Strauss continuously has used these trademarks, some for well
25 over a century, to distinguish its products.

26 7. *Most of Levi Strauss's trademarks are federally registered; all are in full force and*
27 *effect, valid and protectable, and exclusively owned by Levi Strauss. Levi Strauss continuously has*
28 *used each of its trademarks, from the registration date or earlier, until the present and during all time*

1 periods relevant to Levi Strauss's claims.

2 8. Among its marks, Levi Strauss owns the famous Arcuate Stitching Design Trademark
3 (the "Arcuate trademark"), which consists of a distinctive pocket stitching design that is the oldest
4 known apparel trademark in the United States. Levi Strauss has used the Arcuate trademark
5 continuously since 1873 in interstate commerce on clothing products. Levi Strauss first used the
6 Arcuate trademark on jeans and later used it on other products as well.

7 9. Levi Strauss owns, among others, the following United States and California
8 Registrations for its Arcuate trademark, attached as Exhibit A. The federal registrations have become
9 incontestable under the provisions of 15 U.S.C. § 1065.

10 a. U.S. Registration No. 404,248 (first used as early as 1873; registered November
11 16, 1943);

12 b. U.S. Registration No. 1,139,254 (first used as early as 1873; registered
13 September 2, 1980);

14 c. U.S. Registration No. 2,794,649 (first used as early as 1873; registered
15 December 16, 2003);

16 d. California Registration No. 088399 (first used as early as 1873; registered
17 August 24, 1988).

18 10. The Arcuate trademark is famous and is recognized around the world and throughout
19 the United States by consumers as signifying high quality LEVI'S® products. The Arcuate trademark
20 became famous prior to Defendant's conduct that is the subject of this Complaint.

21 11. Levi Strauss also owns the famous Tab Device Trademark (the "Tab trademark"),
22 which consists of a textile marker or other material sewn into one of the regular structural seams of the
23 garment. Levi Strauss uses the Tab trademark on LEVI'S® jeans and a variety of other clothing
24 products, including shirts, jackets, pants and shorts.

25 12. Levi Strauss began to display the Tab trademark on the rear pocket of its pants in 1936
26 when its then National Sales Manager, Leo Christopher Lucier, proposed placing a folded cloth ribbon
27 in the structural seams of the rear pocket. The purpose of this "tab" was to provide "sight
28 identification" of Levi Strauss's products. Given the distinctiveness of the Tab trademark, Mr. Lucier

1 asserted that "no other maker of overalls can have any other purpose in putting a colored tab on an
2 outside patch pocket, unless for the express and sole purpose of copying our mark, and confusing the
3 customer."

4 13. Levi Strauss owns, among others, the following United States Registrations for its Tab
5 trademark, attached as Exhibit B. These registrations have become incontestable under the provisions
6 of 15 U.S.C. § 1065.

7 a. Registration No. 356,701 (first used as early as September 1, 1936; registered
8 May 10, 1938);

9 b. Registration No. 516,561 (first used as early as September 1, 1936; registered
10 October 18, 1949);

11 c. Registration No. 577,490 (first used as early as September 1, 1936; registered
12 July 21, 1953);

13 d. Registration No. 774,625 (first used as early as May 22, 1963; registered
14 August 4, 1964);

15 e. Registration No. 775,412 (first used as early as October 9, 1957; registered
16 August 18, 1964); and

17 f. Registration No. 1,157,769 (first used as early as September 1, 1936; registered
18 June 16, 1981).

19 14. The Tab trademark is valid and protectable, and exclusively owned by Levi Strauss.
20 The Tab trademark is famous and recognized around the world and throughout the United States by
21 consumers as signifying authentic, high quality LEVI'S® jeans. The Tab trademark became famous
22 prior to Defendant's conduct that is the subject of this Complaint.

23 15. Levi Strauss also owns the following United States Registration for the combination of
24 the Arcuate and Tab trademarks, attached as Exhibit C. This registration has become incontestable
25 under the provisions of 15 U.S.C. § 1065.

26 a. Registration No. 2,791,156 (first used as early as September 1, 1936; registered
27 December 9, 2003).

28

1 16. The combined Arcuate/Tab trademark is valid and protectable, and exclusively owned
2 by Levi Strauss. The Arcuate/Tab trademark is famous and recognized around the world and
3 throughout the United States by consumers as signifying authentic, high quality LEVI'S® jeans. The
4 combined Arcuate/Tab trademark became famous prior to Defendant's conduct that is the subject of
5 this Complaint.

6 17. Examples of Levi Strauss's use of its Arcuate, Tab, and combined trademarks on
7 LEVI'S® jeans are attached as Exhibit D.

8 **Mother's Infringements of the Arcuate and Tab Trademarks**

9 18. Beginning at some time in the past and continuing until the present, Mother has
10 manufactured, promoted and sold clothing products, including jeans, that infringe and dilute Levi
11 Strauss's Arcuate and Tab trademarks.

12 19. In particular, Levi Strauss is informed and believes that Mother has manufactured,
13 sourced, marketed and/or sold substantial quantities of jeans bearing pocket designs (hereinafter the
14 "Mother Accused Designs") that are highly similar to Levi Strauss's Arcuate and Tab trademarks and
15 are likely to confuse consumers about the source of Mother's products and/or a relationship between
16 Mother and Levi Strauss. Images of Mother's products bearing some of the Mother Accused Designs
17 are attached to this Complaint as Exhibit E.

18 20. Levi Strauss is informed and believes that Mother has manufactured, marketed and sold
19 substantial quantities of products bearing the Mother Accused Designs, and has obtained and
20 continues to obtain substantial profits from these sales.

21 21. Mother's actions have caused and will cause Levi Strauss irreparable harm for which
22 money damages and other remedies are inadequate. Unless Mother is restrained by this Court, it will
23 continue and/or expand its illegal activities and otherwise continue to cause great and irreparable
24 damage and injury to Levi Strauss by, among other things:

- 25 a. Depriving Levi Strauss of its statutory rights to use and control use of its
26 trademarks;
27 b. Creating a likelihood of confusion, mistake and deception among consumers
28 and the trade as to the source of the infringing products;

- 1 c. Causing the public falsely to associate Levi Strauss with Mother and/or its
2 products, or vice versa;
3 d. Causing incalculable and irreparable damage to Levi Strauss's goodwill and
4 diluting the capacity of its Arcuate and Tab trademarks to differentiate
5 LEVI'S® products from others; and
6 e. Causing Levi Strauss to lose sales of its genuine clothing products.

7 22. Accordingly, in addition to other relief sought, Levi Strauss is entitled to preliminary
8 and permanent injunctive relief against Mother, its affiliates, licensees, subsidiaries and all persons
9 acting in concert with it.

10 **FIRST CLAIM**
11 **FEDERAL TRADEMARK INFRINGEMENT**
12 **(15 U.S.C. §§ 1114-1117; Lanham Act § 32)**

13 23. Levi Strauss realleges and incorporates by reference each of the allegations contained
14 in paragraphs 1 through 22 of this Complaint.

15 24. Without Levi Strauss's consent, Mother has used, in connection with the sale, offering
16 for sale, distribution or advertising of its products, designs that infringe upon Levi Strauss's registered
17 Arcuate and Tab trademarks.

18 25. These acts of trademark infringement have been committed with the intent to cause
19 confusion, mistake, or deception, and are in violation of 15 U.S.C. § 1114.

20 26. As a direct and proximate result of Mother's infringing activities, Levi Strauss has
21 suffered substantial damage.

22 27. Mother's infringement of Levi Strauss's Arcuate and Tab trademarks as alleged herein
23 is an exceptional case and was intentional, entitling Levi Strauss to treble its actual damages and to an
24 award of attorneys' fees under 15 U.S.C. §§ 1117(a) and 1117(b).

25 **SECOND CLAIM**
26 **FEDERAL UNFAIR COMPETITION**
27 **(False Designation of Origin and False Description)**
28 **(15 U.S.C. § 1125(a); Lanham Act § 43(a))**

29 28. Levi Strauss realleges and incorporates by reference each of the allegations contained
30 in paragraphs 1 through 27 of this Complaint.

29. Mother's conduct constitutes the use of symbols or devices tending falsely to describe the infringing products, within the meaning of 15 U.S.C. § 1125(a)(1). Mother's conduct is likely to cause confusion, mistake, or deception by or in the public as to the affiliation, connection, association, origin, sponsorship or approval of the infringing products to the detriment of Levi Strauss and in violation of 15 U.S.C. § 1125(a)(1).

30. As a direct and proximate result of Mother's infringing activities, Levi Strauss has suffered substantial damage.

THIRD CLAIM
FEDERAL DILUTION OF FAMOUS MARK
(Trademark Dilution Revision Act of 2006)
(15 U.S.C. § 1125(c); Lanham Act § 43(c))

31. Levi Strauss realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 30 of this Complaint.

32. Levi Strauss's Arcuate and Tab trademarks are distinctive and famous within the meaning of the Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c).

33. Mother's activities as alleged herein, both separately and collectively, have diluted or are likely to dilute the distinctive quality of Levi Strauss's Arcuate and Tab trademarks in violation of the Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c).

34. Levi Strauss is entitled to injunctive relief pursuant to 15 U.S.C. § 1125(c).

35. Because Mother willfully intended to trade on Levi Strauss's reputation and/or to cause dilution of Levi Strauss's famous Arcuate and Tab trademarks, Levi Strauss is entitled to damages, extraordinary damages, fees and costs pursuant to 15 U.S.C. § 1125(c)(2).

FOURTH CLAIM
CALIFORNIA TRADEMARK INFRINGEMENT AND DILUTION
(Cal. Bus. & Prof. Code §§ 14245, 14247, 14250)

36. Levi Strauss realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 35 of this Complaint.

37. Mother's infringement of Levi Strauss's registered Arcuate and Tab trademarks is likely to cause consumer confusion and dilution of Levi Strauss's Arcuate and Tab trademarks in

1 violation of California Business & Professions Code Sections 14245 and 14247.

2 38. Mother infringed and diluted Levi Strauss's Arcuate and Tab trademarks with
3 knowledge and intent to cause confusion, mistake or deception.

4 39. Mother's conduct is aggravated by that kind of willfulness, wantonness, malice and
5 conscious indifference to the rights and welfare of Levi Strauss for which California law allows the
6 imposition of exemplary damages.

7 40. Pursuant to California Business & Professions Code §§ 14247 and 14250, Levi Strauss
8 is entitled to injunctive relief and damages in the amount of three times Mother's profits and three
9 times all damages suffered by Levi Strauss by reason of Mother's manufacture, use, display or sale of
10 infringing goods.

11 **FIFTH CLAIM**
12 **CALIFORNIA UNFAIR COMPETITION**
13 **(Cal. Bus. & Prof. Code § 17200)**

14 41. Levi Strauss realleges and incorporates by reference each of the allegations contained
15 in paragraphs 1 through 40 of this Complaint.

16 42. Mother's conduct as alleged in this Complaint constitutes "unlawful, unfair or
17 fraudulent business act[s] or practice[s] and unfair, deceptive, untrue or misleading advertising" within
18 the meaning of California Business & Professions Code Section 17200.

19 43. As a consequence of Mother's actions, Levi Strauss is entitled to injunctive relief and
20 an order that Mother disgorge all profits from the conduct alleged in this Complaint.

21 **PRAYER FOR JUDGMENT**

22 WHEREFORE, Levi Strauss prays that this Court grant it the following relief:

23 44. Adjudge that Levi Strauss's Arcuate and Tab trademarks have been infringed by
24 Mother in violation of Levi Strauss's rights under common law, 15 U.S.C. § 1114, and/or California
25 law;

26 45. Adjudge that Mother has competed unfairly with Levi Strauss in violation of Levi
27 Strauss's rights under common law, 15 U.S.C. § 1125(a), and/or California law;

28 46. Adjudge that Mother's activities are likely to, or have, diluted Levi Strauss's famous
Arcuate and Tab trademarks in violation of Levi Strauss's rights under common law, 15 U.S.C. §

1 1125(c), and/or California law;

2 47. Adjudge that Mother and its agents, employees, attorneys, successors, assigns,
3 affiliates, and joint venturers and any person(s) in active concert or participation with it, and/or any
4 person(s) acting for, with, by, through or under it, be enjoined and restrained at first during the
5 pendency of this action and thereafter permanently from:

6 a. Manufacturing, producing, sourcing, importing, selling, offering for sale,
7 distributing, advertising, or promoting any goods that display any words or symbols that so resemble
8 Levi Strauss's Arcuate and Tab trademarks as to be likely to cause confusion, mistake or deception, on
9 or in connection with any product that is not authorized by or for Levi Strauss, including without
10 limitation any product that bears the designs which are the subject of this Complaint and for which
11 Mother is responsible, or any other approximation of Levi Strauss's trademarks;

12 b. Using any word, term, name, symbol, device or combination thereof that causes
13 or is likely to cause confusion, mistake or deception as to the affiliation or association of Mother or its
14 products with Levi Strauss or as to the origin of Mother's goods, or any false designation of origin,
15 false or misleading description or representation of fact, or any false or misleading advertising;

16 c. Further infringing the rights of Levi Strauss in and to any of its trademarks in its
17 LEVI'S® brand products or otherwise damaging Levi Strauss's goodwill or business reputation;

18 d. Otherwise competing unfairly with Levi Strauss in any manner; and

19 e. Continuing to perform in any manner whatsoever any of the other acts
20 complained of in this Complaint;

21 48. Adjudge that Mother be required immediately to supply Levi Strauss's counsel with a
22 complete list of individuals and entities from whom or which it purchased, and to whom or which it
23 sold, offered for sale, distributed, advertised or promoted, infringing products as alleged in this
24 Complaint;

25 49. Adjudge that Mother be required immediately to deliver to Levi Strauss's counsel its
26 entire inventory of infringing products, including without limitation pants and any other clothing,
27 packaging, labeling, advertising and promotional material and all plates, patterns, molds, matrices and
28 other material for producing or printing such items, that are in its possession or subject to its control

1 and that infringe Levi Strauss's trademarks as alleged in this Complaint;

2 50. Adjudge that Mother, within thirty (30) days after service of the judgment demanded
3 herein, be required to file with this Court and serve upon Levi Strauss's counsel a written report under
4 oath setting forth in detail the manner in which it has complied with the judgment;

5 51. Adjudge that Levi Strauss recover from Mother its damages and lost profits in an
6 amount to be proven at trial;

7 52. Adjudge that Mother be required to account for any profits that are attributable to its
8 illegal acts, and that Levi Strauss be awarded the greater of (1) three times Mother's profits or (2)
9 three times any damages sustained by Levi Strauss, under 15 U.S.C. § 1117, plus prejudgment
10 interest;

11 53. Order an accounting of and impose a constructive trust on all of Mother's funds and
12 assets that arise out of his infringing activities;

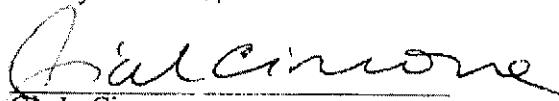
13 54. Adjudge that Levi Strauss be awarded its costs and disbursements incurred in
14 connection with this action, including Levi Strauss's reasonable attorneys' fees and investigative
15 expenses; and

16 55. Adjudge that all such other relief be awarded to Levi Strauss as this Court deems just
17 and proper.

18
19 DATED: August 21, 2012

Respectfully submitted,

20
21 By:


22 Gia L. Cincone
23 KILPATRICK TOWNSEND & STOCKTON LLP
24 Two Embarcadero Center, Eighth Floor
25 San Francisco, California 94111
26 Telephone: (415) 576-0200
27 Facsimile: (415) 576-0300

28
Attorneys for Plaintiff
LEVI STRAUSS & CO.


1 **DEMAND FOR JURY TRIAL**

2 Levi Strauss demands that this action be tried to a jury.

3
4 DATED: August 21, 2012

Respectfully submitted,

5
6 By:


7 Gia L. Cincone
8 KILPATRICK TOWNSEND & STOCKTON LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111
9 Telephone: (415) 576-0200
Facsimile: (415) 576-0300

10 Attorneys for Plaintiff
11 LEVI STRAUSS & CO.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 KILPATRICK TOWNSEND & STOCKTON LLP
GREGORY S. GILCHRIST (Bar # 111536)
2 GIA L. CINCONI (Bar # 141668)
Two Embarcadero Center, 8th Floor
3 San Francisco, California 94111
Telephone: (415) 576-0200
4 Facsimile: (415) 576-0300
Email: ggilchrist@kilpatricktownsend.com, gcincone@kilpatricktownsend.com
5 Attorneys for Plaintiff
6 LEVI STRAUSS & CO.

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 LEVI STRAUSS & CO.,

12 Plaintiff,

13 v.

14 MOTHER LLC,

15 Defendant.
16

Case No.

**CERTIFICATION OF INTERESTED
ENTITIES OR PERSONS**

17 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named
18 parties, there is no such interest to report.
19

20 DATED: August 21, 2012

Respectfully submitted,

21 By: 

22 Gia L. Cincone
23 KILPATRICK TOWNSEND & STOCKTON LLP
Two Embarcadero Center, Eighth Floor
24 San Francisco, California 94111
Telephone: (415) 576-0200
25 Facsimile: (415) 576-0300

26 Attorneys for Plaintiff
27 LEVI STRAUSS & CO.
28